

***HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY
ADMINISTRATIVE RULES REVIEW***

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2006 Legislative Session

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0601

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The temporary rule was effective November 17, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 18, 2006. If no such written request is received, a public hearing will not be held.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: DEQ has initiated this rulemaking to allow public drinking water systems the flexibility to use point of use (POU) treatment technology for treating some chemical contaminants such as arsenic. The rule will exempt small public drinking water systems from the requirement in Section 39-118, Idaho Code, to submit engineering plans and specifications if they serve less than 200 service connections and submit technical and managerial documentation to the Department. The rule also allows public drinking water systems serving over 200 service connections the option to apply to the state for a waiver of the engineering plan and specification requirements.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality for adoption of a pending rule in February 2006. The pending rule will become final upon the conclusion of the 2007 session of the Idaho Legislature if approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary in order to confer a benefit. The benefit is the increased flexibility for public water systems to use point of use treatment devices for treating some chemical contaminants such as arsenic. Additionally, the rule provides a cost savings by waiving engineering plans and specifications required by Section 39-118, Idaho Code, for systems serving less than 200 service connections. It was necessary to make this rule immediately effective to ensure that the point of use treatment alternative is available prior to the revised federal arsenic standard for drinking water becoming effective on January 23, 2006.

IDAHO CODE SECTION 39-107D STATEMENT: Previous federal regulation prohibited use of POU treatment devices for compliance with National Primary Drinking Water Regulations. In

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1996, the United States Congress removed this prohibition through language in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(4)(E)(ii).

The revised arsenic standard of 10 parts per billion for drinking water will become effective on January 23, 2006. *See* National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring, 66 Fed. Reg. 6975-7066, incorporated by reference into Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. In order to assist communities with complying with the revised arsenic standard, DEQ proposes this rule allowing for use of POU treatment devices as allowed per federal law.

Idaho Code Section 39-107D provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. This rule incorporates language from the Safe Drinking Water Act (42 U.S.C. Section 300g-1(b)(4)(E)(ii)). The Safe Drinking Water Act states that POU treatment devices “shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique”. *Id.* To that end, this rule includes language DEQ deems necessary in order to ensure that POU treatment devices are operated and maintained pursuant to federal law.

Although the federal Safe Drinking Water Act does not specifically prohibit use of POU treatment devices for compliance with the nitrate maximum contaminant level (MCL), this rule is more restrictive in that it does not allow POU for the nitrate MCL in community water systems because of the risk of acute illness for infants. POU treatment systems may still be used for compliance with nitrate standards for non-community water systems under certain conditions where the risk of acute illness is low. The nitrate MCL was promulgated in 1975 by the Public Health Service and re-promulgated in 1991 by EPA (56 CFR 3526).

POU treatment devices may be covered under the definition of “material modification” outlined in Section 39-118, Idaho Code, and be subject to plan and specification review. However, because the POU treatment devices are ANSI/NSF certified pre-engineered units and are not being constructed individually onsite, DEQ has determined that these devices will not produce a significant impact on the environment or on public health, and therefore waives plan and specification review for certain small public water systems as specified in the rule. The main public health and environmental concern associated with POU treatment devices pertains to the proper operation and maintenance of the units.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: This temporary rulemaking schedule did not allow for negotiated rulemaking.

GENERAL INFORMATION: For more information about DEQ’s programs and activities, visit DEQ’s web site at www.deq.idaho.gov.

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ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the temporary and proposed rule, contact Jerri Henry at jerri.henry@deq.idaho.gov, (208)373-0471.

Anyone may submit written comments regarding this proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before February 1, 2006.

DATED this 16th day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002, are herein incorporated by reference except for the definition of the terms “action level,” “disinfection,” “noncommunity water system,” and “person”. (5-3-03)

There are no changes to Subsections 003.01 through 003.41

42. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (11-17-05)T

423. Maximum Daily Consumption Rate. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest on record. (12-10-92)

434. Maximum Hourly Demand. The greatest volume of water used in any hour during a one (1) year period. (12-10-92)

445. Maximum Residual Disinfectant Level (MRDL). A level of a disinfectant added for water treatment that may not be exceeded at the consumer’s tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed

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the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)

456. Maximum Residual Disinfectant Level Goal (MRDLG). The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)

467. Method Detection Limit (MDL). The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)

478. New System. Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)

489. Noncommunity Water System. A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (4-5-00)

490. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)

501. Nuclear Facility. Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)

512. Operating Shift. That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

523. Owner/Purveyor of Water/Supplier of Water. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. (4-6-05)

534. Peak Hourly Flow. The highest hourly flow during any day. (12-10-92)

545. Person. A human being, municipality, or other governmental or political

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subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

556. Pesticides. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. (12-10-92)

57. Point of Use (POU) Treatment Device. A treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap. (11-17-05)T

58. Point of Use (POU) Treatment System. A collection of POU treatment devices. (11-17-05)T

569. Public Notice. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

5760. Public Drinking Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district”. A public water system is either a “community water system” or a “noncommunity water system”. (4-6-05)

5861. Public Water System/Water System/System. Means “public drinking water system”. (4-5-00)

5962. Repeat Compliance Period. Any subsequent compliance period after the initial compliance period. (12-10-92)

603. Responsible Charge (RC). Responsible Charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. (4-5-00)

614. Responsible Charge Operator. An operator of a public drinking water system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. (4-6-05)

625. Sampling Point. The location in a public water system from which a sample is drawn. (12-10-92)

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636. Sanitary Defects. Any faulty structural condition which may allow the water supply to become contaminated. (12-10-92)

647. Sanitary Survey. An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

- a. Source; (4-5-00)
- b. Treatment; (4-5-00)
- c. Distribution system; (4-5-00)
- d. Finished water storage; (4-5-00)
- e. Pumps, pump facilities, and controls; (4-5-00)
- f. Monitoring and reporting and data verification; (4-5-00)
- g. System management and operation; and (4-5-00)
- h. Operator compliance with state requirements. (4-5-00)

658. SDWIS-State. An acronym that stands for “Safe Drinking Water Information System-State Version”. It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)

669. Significant Deficiency. As identified during a sanitary survey, any defect in a system’s design, operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)

670. Special Irrigation District. An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. (4-6-05)

671. Spring. A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)

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6972. Substitute Responsible Charge Operator. An operator of a public drinking water system who holds a valid license at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)

703. Surface Water System. A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)

744. Specific Ultraviolet Absorption (SUVA). SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/l). (4-5-00)

725. Total Organic Carbon (TOC). Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)

736. Transient Noncommunity Water System. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (10-1-93)

747. Treatment Facility. Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)

758. Turbidity. A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)

769. Uncovered Finished Water Storage Facility. An uncovered tank, reservoir, or other facility that is used to store water that will undergo no further treatment except residual disinfection. (5-3-03)

7780. Unregulated Contaminant. Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

781. Variance. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deferment does not cause an unreasonable risk to public health.

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(12-10-92)

7982. Very Small Public Drinking Water System. A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (4-5-00)

803. Volatile Organic Chemicals (VOCs). VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

814. Vulnerability Assessment. A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

825. Waiver. (12-10-92)

a. For the purposes of these rules, except Sections 550 through 552, “waiver” means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (10-1-93)

b. For purposes of Sections 550 through 552, “waiver” means a dismissal of any requirement of compliance. (12-10-92)

c. For the purposes of Section 010, “waiver” means the deferral of a fee assessment for a public drinking water system. (10-1-93)

836. Water for Human Consumption. Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. (5-3-03)

847. Water Main. A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections. The collection of water mains within a given water supply is called the distribution system. (5-3-03)

858. Well House. A structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, distribution line, or a treatment unit. Well houses are often called pump houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

450. USE OF NON-CENTRALIZED TREATMENT DEVICES.

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01. Point of Entry Devices. 40 CFR 141.100, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

02. Point of Use (POU) Treatment Devices. (11-17-05)T

a. A public water system may use point of use (POU) treatment in order to achieve compliance with certain maximum contaminant levels (MCL) or treatment techniques, in accordance with Subsection 450.02.b., when the following conditions are met: (11-17-05)T

i. A program for long-term operation, maintenance, and monitoring of the POU treatment system is approved by the Department, pursuant to Section 450.02.d. (11-17-05)T

ii. The public water system or a vendor of POU treatment devices under contract with the public water system shall own, control, and maintain the POU treatment system to ensure proper operation and maintenance and compliance with the MCL or treatment technique. (11-17-05)T

iii. Each POU treatment device is equipped with a mechanical warning mechanism to ensure that customers are automatically notified of operational problems. (11-17-05)T

iv. The POU treatment device must be certified by an accredited American National Standards Institute (ANSI) certification body to meet applicable ANSI/National Sanitation Foundation (NSF) Standards. (11-17-05)T

b. POU treatment devices shall not be used to achieve compliance with a MCL or treatment technique requirement for a microbial contaminant or an indicator of a microbial contaminant. Community water systems may not use POU treatment devices to achieve compliance with a nitrate MCL. (11-17-05)T

c. The Department will waive the plan and specification requirements as described in Subsection 551.04 relating to material modifications for the following systems only to that extent that the material modification proposed is limited to the installation and/or use of a POU treatment device(s): (11-17-05)T

i. Community water systems serving two hundred (200) or fewer service connections. (11-17-05)T

ii. Non-transient non-community water systems. (11-17-05)T

iii. Transient non-community water systems. (11-17-05)T

iv. Community water systems serving more than two hundred (200) service connections if approved by the Department through the waiver process outlined in Subsection 005.01.a. (11-17-05)T

d. A public water system must obtain written approval by the Department before installation of a POU treatment device for the purpose of achieving compliance with a MCL or

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treatment technique. The public water system shall submit the following documentation for approval to the Department: (11-17-05)T

i. Information identifying the public water system name and number, total number of service connections, contaminant(s) to be treated, type of POU treatment device to be installed, manufacturer and model number of the POU treatment device, type and function of the mechanical warning mechanism (performance indicator) on the POU treatment device, certification verification for ANSI/NSF, installer qualifications, and a proposed date for installation of the POU treatment device(s). (11-17-05)T

ii. The manufacturer's specifications for the POU treatment device including demonstration that the POU treatment device is suited for the water chemistry of the public water system and contaminant(s) of concern and is of sufficient design and capacity for the particular application. (11-17-05)T

iii. Information relating to how other drinking water dispensing units, such as instant hot water dispensers and refrigerator water and ice dispensers, whose primary function is to provide drinking water, will be provided with treated water. If water is transported from a POU treatment device to another drinking water dispensing unit, the conducting tube shall be of non-reactive material. (11-17-05)T

iv. For non-transient non-community water systems and transient non-community water systems, demonstration that the drinking water dispensing units are located in areas adequate to protect public health. (11-17-05)T

v. Demonstration that all POU treatment devices are owned, controlled, and maintained by the public water system or by a vendor of POU treatment devices under contract with the public water system. (11-17-05)T

vi. A sampling plan identifying the location of all service connections and demonstrating how the system will ensure that all POU treatment devices are sampled for compliance with the contaminant(s) being treated during every compliance period or at a frequency designated by the state. (11-17-05)T

vii. Documentation that a customer at each service connection has agreed to installation and use of a POU treatment device and has granted access for installation, maintenance, and sampling. (11-17-05)T

viii. A plan that describes how the public water system will address any non-compliance with Subsection 450.02.d.vii. (11-17-05)T

ix. A maintenance plan that demonstrates how on-going maintenance activities will be performed and on what frequency, including: frequency of treatment media replacements, frequency of POU treatment device replacements, periodic verification that the mechanical warning device is functional, schedule of planned maintenance activities, plan of how the system will address unscheduled maintenance problems, and a plan and method of waste disposal. (11-17-05)T

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x. Documentation that the system meets the current requirements for a certified operator pursuant to Section 554. (11-17-05)T

xi. A plan for on-going education and outreach to the customers of the public water system, including rental customers, on POU treatment and health effects of the contaminant(s) of concern. (11-17-05)T

xii. A plan for how the system will ensure real estate disclosures for the POU treatment system. (11-17-05)T

xiii. A statement of recognition that failure to maintain compliance with the MCL, or the failure to operate and maintain compliance with a POU treatment system as approved by the Department, may necessitate installation of centralized treatment. (11-17-05)T

e. Within thirty (30) days of installing the approved POU treatment system, the public water system shall notify the Department in writing that the POU treatment system was installed as approved by the Department. (11-17-05)T

f. Within thirty (30) days of installing the approved POU treatment system, the public water system shall submit samples from each POU treatment device to a certified laboratory for the contaminant(s) being treated by the POU treatment device. The samples shall be used to demonstrate initial compliance with the MCL. (11-17-05)T

g. The water system owner or operator must maintain records for a POU treatment system. Records shall be submitted to the Department at a frequency and in a format specified by the Department. Records to maintain shall include: (11-17-05)T

i. Requirements of Subsection 450.02.d.; (11-17-05)T

ii. All sampling performed on the POU treatment devices; (11-17-05)T

iii. Maintenance logs and schedules; (11-17-05)T

iv. Log of installed units; and (11-17-05)T

v. Contracts, lease agreements, or other legal documents with vendors and consumers. (11-17-05)T

023. Use of Bottled Water. 40 CFR 141.101, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0501 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The temporary rule is effective January 4, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking. This action is authorized by Title 39, Chapters 1 and 36, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 18, 2006. If no such written request is received, a public hearing will not be held.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: Administration of the loan program is currently paid for by a 4% set-aside from the federal capitalization grants that DEQ receives from the U.S. Environmental Protection Agency (EPA). Federal capitalization grants have decreased substantially over the last few years thereby reducing the funding available from the set-aside to administer the loan program. The amount available from the set-aside each year is no longer sufficient to fund DEQ's administrative costs for the year. This creates a dilemma for DEQ because, while the EPA grant funds available for administering the State Revolving Fund (SRF) are diminishing, the amount of funds available for loans is growing due to the increasing dollar amount of loan repayments each year. The work load to issue new loans is increasing as the SRF funds increase.

The purpose of this rulemaking is to revise the Rules for Administration of Water Pollution Control Loans to allow DEQ to collect a fee in the form of a percentage of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on SRF loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Cities, counties, districts and associations that own and operate public wastewater treatment systems may be interested in participating in this rulemaking.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality for adoption of a pending rule in February 2006. The pending rule will become final upon the conclusion of the 2007 session of the Idaho Legislature if approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect public

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health. In addition, the Governor has found that the fee imposed in this rule meets the criteria set out in Section 67-5226(2), Idaho Code. Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

FEE SUMMARY: Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, October 5, 2005, Vol. 05-10, pages 711 through 712.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the temporary and proposed rule, contact Bill Jerrel at william.jerrel@deq.idaho.gov, (208)373-0400.

Anyone may submit written comments regarding this proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before February 1, 2006.

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DATED this 16th day of November, 2005.

Paula J. Wilson
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE

005. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (5-3-03)

04. Close or Closing. The date on which the borrower issues and physically delivers to the Department the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (1-4-06)T

045. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

056. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the

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construction of wastewater treatment facilities; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)

067. Department. The Idaho Department of Environmental Quality. (1-1-89)

078. Director. The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

089. Eligible Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (3-30-01)

0910. Eligible Costs. Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

101. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)

112. Environmental Impact Statement (EIS). A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (5-3-03)

123. Facility Plan. Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective. (5-3-03)

134. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

145. Finding of No Significant Impact (FNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)

156. Handbook. "Wastewater Facilities Loan Account Handbook of Procedures." (5-3-03)

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167. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

178. Ineligible Costs. Costs which are described in Section 041.05. (5-3-03)

189. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)

190. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)

201. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)

242. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

223. Nonpoint Source Pollution. Water pollution that comes from varied, nonspecific, and diffuse sources and can be associated with the general land disturbing activity that causes the pollution. (3-30-01)

234. Nonpoint Source Project Sponsor. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof. (3-30-01)

245. O & M Manual. For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)

256. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)

267. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity

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considered a nonpoint source by definition. (3-30-01)

278. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)

289. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

2930. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

301. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

312. Sewer Use Ordinance. An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (1-1-89)

323. State. The state of Idaho. (12-31-91)

334. Supplemental Grants. A grant awarded to a municipality in conjunction with a loan from the water pollution control loan account. (3-30-01)

345. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

356. Unified Watershed Assessment. Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

367. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

378. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

389. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine,

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pollutants or domestic or commercial wastes; sewage. (1-1-89)

3940. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

401. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (1-4-06)T

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (1-4-06)T

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (1-4-06)T

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; and (1-4-06)T

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year. (1-4-06)T

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the amount of the loan fee. (1-4-06)T

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (1-4-06)T

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0323. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (1-1-89)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; and (1-1-89)

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the

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engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; and (5-3-03)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; and (5-3-03)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; and (3-30-01)

g. The loan fee pursuant to Section 032; and (1-4-06)T

h. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (3-30-01)

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)